

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 28, 2004

**STATE OF TENNESSEE v. LOUIS CLYDE JACKSON**

**Appeal from the Criminal Court for Knox County**  
**Nos. 65250, 68202, 68203, 68204, 68519, & 68520     Mary Beth Leibowitz, Judge**

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**No. E2003-02019-CCA-R3-CD - Filed October 26, 2004**

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The petitioner, Louis Clyde Jackson, appeals the trial court's denial of his Motion to Correct and/or Amend Judgment in which he asked the trial court to apply pretrial jail credit to his sentences. We hold that this case is not properly before us because no appeal as of right exists from the trial court's dismissal of the motion, and we dismiss the appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Mark E. Stephens, District Public Defender, and Mary Ellen Coleman, Assistant Public Defender (on appeal); and Stanley R. Barnett, Knoxville, Tennessee (at trial), for the appellant, Louis Clyde Jackson.

Paul G. Summers, Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Randall E. Nichols, District Attorney General; and Patricia A. Cristil, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

This case relates to the defendant's multiple convictions for burglary. The record reflects that on November 5, 1999, the defendant pled guilty to five counts of burglary, a Class D felony, in case numbers 68202, 68203, 68204, 68519, and 68520 and received an effective four-year sentence as a Range II, multiple offender. That same day, the defendant also pled guilty to burglary and vandalism, a Class E felony, in case number 65250 and received an effective five-year sentence. The trial court ordered that the defendant serve the four-year sentence consecutively to the five-year sentence and that he serve this effective nine-year sentence consecutively to sentences he received in case numbers 60515, 60516, 60775, 60934, 60935, and 61261. No judgments of conviction or any other information about these latter six cases are in the appellate record.

On June 26, 2003, the defendant filed pro se a Motion to Correct and/or Amend Judgment, requesting that the trial court apply 370 days of pretrial jail credit to his effective nine-year sentence. On July 10, 2003, the trial court denied the motion without a hearing or appointing counsel, stating that the defendant's pretrial jail credit had been applied to his sentence in case number 60516. On appeal, the defendant claims that his pretrial jail credit should be applied to his effective nine-year sentence and that the trial court improperly denied his motion without a hearing or appointing counsel. The defendant notes that while Rule 3(b), T.R.A.P., does not provide an appeal as of right from a trial court's denial of motions to correct sentences, this appeal is properly before us because his motion can be considered a petition for habeas corpus relief from an illegal sentence. The state asserts that the defendant was not entitled to an appeal as of right pursuant to Rule 3(b), T.R.A.P., and that his only avenue for relief was through a petition for writ of certiorari. It argues that this court should not treat the defendant's appeal as a writ of certiorari because this case does not present "unique circumstances which authorize the trial court to entertain requests for declaration of proper sentence credits." State v. Henry, 946 S.W.2d 833, 834 (Tenn. Crim. App. 1997).

Rule 3(b) contemplates an appeal from a judgment of conviction, from an order denying or revoking probation, or "from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding." The rule does not permit a direct appeal of a trial court's dismissal of a motion to correct an illegal sentence. Nevertheless, in the interest of justice, the appellate court may transform an improperly filed appeal into a petition for a writ of certiorari. State v. Leath, 977 S.W.2d 132, 135 (Tenn. Crim. App. 1998); see T.R.A.P. 36(a). However, "appeals via certiorari should rarely be granted to review motions that assert sentencing infirmities which do not rise to the level of illegality or voidness." Cox v. State, 53 S.W.3d 287, 294 (Tenn. Crim. App. 2001).

The defendant sought relief by filing a motion to correct his sentences instead of filing a petition for writ of habeas corpus. As the parties note, no appeal as of right pursuant to Rule 3, T.R.A.P., exists from the trial court's denial of such motion. The defendant also has not shown any illegality that warrants us treating the appeal as a writ of certiorari. Therefore, based upon the foregoing and the record as a whole, we dismiss the appeal.

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JOSEPH M. TIPTON, JUDGE